

SECOND REGULAR SESSION

# HOUSE BILL NO. 1766

## 91ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES MONACO, BOUCHER, RIZZO, RIBACK WILSON (25),  
TROUPE, BRAY, HILGEMANN (Co-sponsors), McKENNA, GAMBARO, FROELKER, FRASER,  
WILLIAMS, SKAGGS, VILLA, HARLAN, HOSMER AND LIESE.

Read 1<sup>st</sup> time January 31, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

4073L.02I

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### AN ACT

To repeal section 565.030, RSMo, and to enact in lieu thereof one new section relating to  
judicial sentencing.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 565.030, RSMo, is repealed and one new section enacted in lieu  
2 thereof, to be known as section 565.030, to read as follows:

565.030. 1. Where murder in the first degree is charged but not submitted or where the  
2 state waives the death penalty, the submission to the trier and all subsequent proceedings in the  
3 case shall proceed as in all other criminal cases with a single stage trial in which guilt and  
4 punishment are submitted together.

5 2. Where murder in the first degree is submitted to the trier without a waiver of the death  
6 penalty, the trial shall proceed in two stages before the same trier. At the first stage the trier shall  
7 decide only whether the defendant is guilty or not guilty of any submitted offense. The issue of  
8 punishment shall not be submitted to the trier at the first stage. If an offense is charged other  
9 than murder in the first degree in a count together with a count of murder in the first degree, the  
10 trial judge shall assess punishment on any such offense according to law, after the defendant is  
11 found guilty of such offense and after he finds the defendant to be a prior offender pursuant to  
12 chapter 558, RSMo.

13 3. If murder in the first degree is submitted and the death penalty was not waived but the  
14 trier finds the defendant guilty of a lesser homicide, a second stage of the trial shall proceed at  
15 which the only issue shall be the punishment to be assessed and declared. No further evidence

**EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended  
to be omitted in the law.**

16 shall be received. If the trier is a jury it shall be instructed on the law. The attorneys may then  
17 argue as in other criminal cases the issue of punishment, after which the trier shall assess and  
18 declare the punishment as in all other criminal cases.

19 4. If the trier at the first stage of a trial where the death penalty was not waived finds the  
20 defendant guilty of murder in the first degree, a second stage of the trial shall proceed at which  
21 the only issue shall be the punishment to be assessed and declared. Evidence in aggravation and  
22 mitigation of punishment, including but not limited to evidence supporting any of the  
23 aggravating or mitigating circumstances listed in subsection 2 or 3 of section 565.032, may be  
24 presented subject to the rules of evidence at criminal trials. Such evidence may include, within  
25 the discretion of the court, evidence concerning the murder victim and the impact of the crime  
26 upon the family of the victim and others. Rebuttal and surrebuttal evidence may be presented.  
27 The state shall be the first to proceed. If the trier is a jury it shall be instructed on the law. The  
28 attorneys may then argue the issue of punishment to the jury, and the state shall have the right  
29 to open and close the argument. The trier shall assess and declare the punishment at life  
30 imprisonment without eligibility for probation, parole, or release except by act of the governor:

31 (1) If the trier finds by a preponderance of the evidence that the defendant is mentally  
32 retarded; or

33 (2) If the trier does not find beyond a reasonable doubt at least one of the statutory  
34 aggravating circumstances set out in subsection 2 of section 565.032; or

35 (3) If the trier concludes that there is evidence in mitigation of punishment, including  
36 but not limited to evidence supporting the statutory mitigating circumstances listed in subsection  
37 3 of section 565.032, which is sufficient to outweigh the evidence in aggravation of punishment  
38 found by the trier; or

39 (4) If the trier decides under all of the circumstances not to assess and declare the  
40 punishment at death. If the trier is a jury it shall be so instructed. If the trier assesses and  
41 declares the punishment at death it shall, in its findings or verdict, set out in writing the  
42 aggravating circumstance or circumstances listed in subsection 2 of section 565.032 which it  
43 found beyond a reasonable doubt. If the trier is a jury [it shall be instructed before the case is  
44 submitted that if it] **and** is unable to decide or agree upon the punishment the court shall assess  
45 and declare the punishment at life imprisonment without eligibility for probation, parole, or  
46 release except by act of the governor [or death]; **and the jury shall be accordingly instructed**  
47 **before the case is submitted.** The court shall follow the same procedure as set out in this  
48 section whenever it is required to determine punishment for murder in the first degree.

49 5. Upon written agreement of the parties and with leave of the court, the issue of the  
50 defendant's mental retardation may be taken up by the court and decided prior to trial without  
51 prejudicing the defendant's right to have the issue submitted to the trier of fact as provided in

52 subsection 4 of this section.

53           6. As used in this section, the terms "mental retardation" or "mentally retarded" refer to  
54 a condition involving substantial limitations in general functioning characterized by significantly  
55 subaverage intellectual functioning with continual extensive related deficits and limitations in  
56 two or more adaptive behaviors such as communication, self-care, home living, social skills,  
57 community use, self-direction, health and safety, functional academics, leisure and work, which  
58 conditions are manifested and documented before eighteen years of age.

59           7. The provisions of this section shall only govern [offenses committed] **prosecutions**  
60 **commenced** on or after August 28, [2001] **2002**.